



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **ET, FFL**

### Introduction

This expedited hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- An order for an early termination of tenancy and an Order of Possession for an immediate and severe risk pursuant to section 56; and
- Authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The landlord was represented at the hearing by a co-landlord not named on the Application for Dispute Resolution, SC ("landlord"). The tenant did not attend the hearing, although I left the teleconference hearing connection open until 11:35 a.m. to enable the tenant to call into this teleconference hearing scheduled for 11:00 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the landlord and I were the only ones who had called into this teleconference.

When asked whether the landlord served the tenant with the Notice of Expedited Hearing, the landlord testified that she thought that the Residential Tenancy Branch would provide the document to the tenant. The landlord further testified that her caretaker "told" the tenant about the hearing, although that she doesn't know if a copy of the Notice of Expedited Hearing was actually served upon the tenant. The landlord did not present any documentary evidence to me to prove the tenant was aware of today's hearing. The landlord testified that the tenant does not have a phone, is difficult to contact face to face and refuses to answer the door when approached.

### Preliminary Issue – service of Notice of Expedited Hearing

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure states:

At the hearing, the applicant must be prepared to demonstrate to the satisfaction of the arbitrator that each respondent was served with the Notice of Dispute Resolution Proceeding Package and all evidence as required by the Act and these Rules of Procedure.

Rule 7.4 states that evidence must be presented by the party who submitted it, or by the party's agent. If a party or their agent does not attend the hearing to present evidence, any written submissions supplied may or may not be considered.

Residential Tenancy Branch Policy Guideline PG-12 states that failure to prove service may result in the matter being dismissed, with or without leave to reapply. Adjournments to prove service are given only in unusual circumstances.

Part 15 of the PG-12 states where the respondent does not appear at a dispute resolution hearing, the applicant must be prepared to prove service of the notice of hearing package. Where proof of service is required, the person who actually served the documents must either:

- be available as a witness in the hearing to prove service, or
- provide a signed statement with the details of how the documents were served.

The landlord was not the person who actually served the Notice of Expedited Hearing. She was unable to testify whether the Notice was even served upon the tenant and did not present any evidence to prove service of the Notice. Lastly, the landlord did not provide the "caretaker" who she stated "told" the tenant about the expedited hearing. Proof of serving a Notice of Expedited Hearing is especially critical because of the abridged time frames given to respondents to provide response material to the Residential Tenancy Branch and to the applicants before the hearing. For the reasons stated above, I am not satisfied the tenant was effectively served with the Notice of Expedited Hearing and I must dismiss the landlord's application with leave to reapply.

### Conclusion

The application is dismissed with leave to reapply. Leave to reapply does not extend any deadlines established pursuant to the *Act*.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 16, 2020